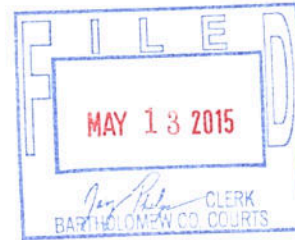


STATE OF INDIANA) IN THE BARTHOLOMEW CIRCUIT COURT
) SS:
COUNTY OF BARTHOLOMEW) CAUSE NO.: 03C01-1406-ES-2796

IN THE MATTER OF THE SUPERVISED
ESTATE OF CARY A. OWSLEY,
DECEASED.

LISA A. OWSLEY,
Personal Representative.



SUA SPONTE ORDER RECUSING SITTING JUDGE,
STEPHEN R. HEIMANN, FROM THIS CASE

Comes now Stephen R. Heimann, Circuit Court Judge, and *sua sponte* recuses himself from this case for the following reasons¹:

1. This case is a related case to two other cases which have been filed in this court as well as a pending case filed in Federal Court. These cases all relate to the death of Cary A. Owsley.
2. The first case filed relating to the death of Cary A. Owsley was in Cause Number 03C01-1307-MI-4161. The Petitioner in that case was Cheryl O. Jackson and the Respondents were Lisa A. Owsley and Garland Brook Cemetery. Coroner Larry Fisher was permitted to become a party as an Intervenor. Cary A. Owsley died of a single gunshot wound which was

¹ Often, when a judge recuses him or herself from a case, the judge simply states in a generic fashion that the judge has a conflict of interest which requires that they no longer stay on the case. In this matter, this judge is being very specific about the reason for his recusal. This is in large part because some of the decedent's family have asserted that there has been a "Botched Investigation," a "Cover-Up," "Obstruction of Justice," and a "Conspiracy to Obstruct Justice" – all by Bartholomew County Indiana governmental officials. See Federal Lawsuit, Cause No. 1:15-cv-00552. If this Judge simply recused himself without detailed reasons given, there could well be questions raised in the community as to why Judge Heimann is suddenly recusing himself and whether he is a part of this asserted conspiracy. The purpose of the details given in this order is to state specifically why Judge Heimann is recusing himself because the citizens need to continue to have confidence in the judiciary, regardless of the issue which comes before a court.

determined by Bartholomew County Coroner to be a suicide. Cary A. Owsley's sister, Cheryl O. Jackson, filed a suit seeking to have the body of Cary A. Owsley exhumed for an autopsy. Cary A. Owsley's wife, Lisa A. Owsley was named as a party to the MI suit. Since Cheryl O. Jackson disputed the finding of suicide by the Coroner, Larry Fisher was permitted to intervene.

3. In the MI case, at an open hearing on the issue of exhumation and autopsy, this Court was able to suggest a solution which was agreed upon by all parties. It set forth terms for the exhumation and an autopsy conducted by an independent forensic pathologist. It also allowed a forensic pathologist selected by Cheryl O. Jackson to be present at the autopsy as well. The MI case was concluded in 2014.

4. In March of 2014, Cheryl O. Jackson filed a petition seeking to have herself appointed as the administrator for Cary A. Owsley's estate, cause number 03C01-1403-EU-1170. Since the petition was not served on Cary A. Owsley's widow, Lisa A. Owsley, the court gave Cheryl O. Jackson additional time to comply with the law requiring service on the widow. When service was not accomplished, Cheryl O. Jackson's request for an Unsupervised Estate was dismissed.

5. The current case is a Supervised Estate, opened by Cary A. Owsley's widow, Lisa A. Owsley. On April 7, 2015, this Court entered an order denying Cheryl O. Jackson's request to have Lisa A. Owsley removed as personal representative of the estate and Cheryl O. Jackson's further request that she be appointed Special Administrator.

6. In this case on May 7, 2015, Cheryl O. Jackson filed a Motion to Correct Error; Logan Owsley, son of Cary A. Owsley, filed a Petition to Require Final Accounting; and Logan Owsley filed a Petition to Distribute Abandoned Property. These matters are pending.

7. On April 30, 2015, Judge Heimann attended the *Bartholomew County Human*

Rights Banquet. At that banquet while Judge Heimann was seated at a table in a room having over 400 people in it, Judge Heimann was speaking with Robert Hayes. Mr. Hayes was standing to Judge Heimann's right. Coroner Fisher came up on the left side of Judge Heimann and placed his hand on Judge Heimann's left shoulder and stood there waiting for the conversation between Robert Hayes and Judge Heimann to end. Upon that conversation ending, Coroner Fisher leaned forward between Judge Heimann and the person seated to Judge Heimann's left, and asked in a loud laughing stage-voice, "Have you seen Cheryl Jackson here tonight? I've been looking all over for her!" Coroner Fisher then grinned and laughed about it. Judge Heimann was taken aback by the cavalier attitude and inappropriateness of Coroner Fisher's comments.

8. While Coroner Fisher is not involved in the current supervised estate case; he was involved in the related case concerning the exhumation and autopsy of Cary A. Owsley. Both Cheryl O. Jackson, and now Logan A. Owsley, maintain that a conspiracy existed between Bartholomew County officials concerning Cary A. Owsley's death investigation, which investigation and conspiracy led to Coroner Fisher's determination that the death was a suicide.

9. There is a pending case in the United States District Court, Southern District of Indiana, Cause Number 1:15-cv-00552, alleging civil rights violations were committed by Bartholomew County officials regarding the cursory investigation of Cary A. Owsley's death, and the further asserted a cover-up and conspiracy to obstruct justice. Coroner Fisher is a defendant in the federal suit.

10. While Judge Heimann has worked extensively in an attempt to bring these cases to resolution in an open fashion, taking extra time and effort, to write out detailed orders explaining the law and the facts as presented to the Court; and while Judge Heimann has been vigilant in maintaining independence relating to these cases; the judicial Canons of Ethics

provides that “*a judge is to avoid even the appearance of impropriety*”.

11. Those observing Coroner Fisher’s actions and hearing his statements at the Human Rights banquet could easily be led to think that Judge Heimann and Coroner Fisher are somehow buddies who enjoy a laugh about Cheryl O. Jackson. Also, by Coroner Fisher’s laughing and joking loudly in an open forum, this could be interpreted that Coroner Fisher believes that Cheryl O. Jackson’s position as it relates to her brother’s death is so far off base as to be laughable. Given the forum with tables full of people sitting there, Judge Heimann was not in a position to even attempt to address any observers’ conclusions, especially since Coroner Fisher had stood with his hand on Judge Heimann’s shoulder for 20 to 30 seconds or so, and then immediately made a statement to Judge Heimann and started laughing loudly. And, while Cheryl O. Jackson has not prevailed in being appointed personal representative or special administrator in her brother’s estate; she brought suit seeking to have an autopsy performed in the initial MI case, which request was granted. An autopsy was not ordered performed by Coroner Fisher at the time of Cary A. Owsley’s death. It was performed after extensive efforts by this Court to ensure that it would be performed under circumstances fair to all parties involved. This judicial officer does not find the matters concerning Cary A. Owsley’s death to be humorous in any fashion. Cary A. Owsley’s death was a tragedy for all persons, including his wife, Lisa; his son, Logan; his mother, Mrs. Pennybaker; and his sister, Cheryl. Regardless of the litigation in these cases, Cary A. Owsley’s death remains a tragedy.

12. **Canon 1** of the Code of Judicial Conduct states:
A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety.

RULE 1.2 thereunder states:

Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public

confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and *the appearance of impropriety*.

The **Comment** thereunder states:

[1] *Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety.* This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] *Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.” (emphasis added)*

13. **Canon 2** of the Code of Judicial Conduct states:
A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently.

RULE 2.4 thereunder states:

- (A) A judge shall not be swayed by public clamor or fear of criticism.
(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.
(C) *A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.*

The **Comment** thereunder states:

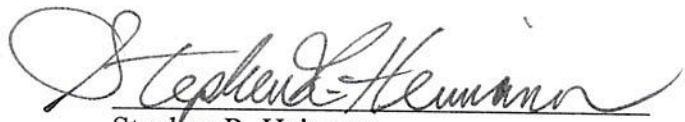
[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge’s friends or family. *Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences. (emphasis added)*

14. Given the fact that Bartholomew County is a relatively small county and that Judge Heimann is well known in the community, as is Coroner Fisher; and given the fact that this case has been highly publicized; and given the fact that Coroner Fisher’s actions could easily erode confidence in the judiciary because his actions give the appearance of impropriety as though Judge Heimann may well believe that this serious matter is somehow humorous or that

Coroner Fisher has some special influence with Judge Heimann; this Judge Heimann determines that he can no longer sit as judge on this case. In order to maintain the integrity of the judiciary and to maintain Judge Heimann's personal integrity, Judge Heimann must step down from this case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Judge Heimann is recusing himself from this case effective immediately. The parties are given seven days, plus three additional days because this order is going out by regular mail, for a total of ten days after the entry of this order, in which to select a Special Judge to preside over these matters. In the event that the parties fail to select a Special Judge in that time, the Court will appoint a Special Judge pursuant to Trial and Local Rules.

All of which is ORDERED this 13th day of May, 2015


Stephen R. Heimann
Judge, Bartholomew Circuit Court

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